

Dated: May 20, 2014

The National Association of Broadcasters (“NAB”) respectfully requests a 21-day extension – until June 23, 2014 – for interested persons to file comments in response to the Copyright Royalty Judges’ notice of proposed rulemaking (“NPRM”) in the above-captioned matter. For at least four reasons, the extension request should be granted.

1. NAB has been diligently gathering information regarding the 30 or so proposed revisions to provide the Judges with a complete response regarding the significant and adverse economic and administrative burdens that these proposed changes would impose on broadcasters if adopted, but it will need more time than the 30 days currently allotted to complete that process.¹
2. SoundExchange was able to prepare its petition seeking this rulemaking at its leisure – no doubt over several months – and to gather its own information to support its proposed changes. Basic fairness dictates that licensees have longer than 30 days to gather and present countervailing information to ensure that the Judges have a balanced record when deciding the NPRM.
3. NAB is unaware of any urgency that would necessitate immediate action on SoundExchange’s proposal and deprive licensees of an additional three weeks in which to respond.
4. Precedent supports granting such an extension. In a similar rulemaking regarding notice and recordkeeping requirements, the Copyright Office granted an extension to expand the time for comments on proposed requirements to nearly 60 days.

First, NAB began to engage in the extensive fact-finding necessary to prepare a meaningful response as soon as the NPRM issued. The task, however, is a significant one given that there some 30 proposed revisions in the NPRM to address and that NAB seeks to comment on the highly detailed proposed regulations at a level of specificity that will be helpful to the Judges. Further, if adopted wholesale, the proposed requirements would have an enormous adverse economic and administrative impact on NAB’s members by, for example, requiring broadcasters to backfill their legacy broadcast systems (assuming they can even do so) to include ISRC information (which many broadcasters are not

¹ NAB’s task of responding to the NPRM is compounded by the impending May 23, 2014 deadline for submitting comments in response to the Copyright Office’s Notice of Inquiry, which it is also preparing. *See* Music Licensing Study: Notice and Request for Public Comment: Notice of Inquiry, 79 Fed. Reg. 14,739 (Mar. 17, 2014); Music Licensing Study: Notice of Extension of Comment Period, 79 Fed. Reg. 27,938 (May 15, 2014).

even able to find) and compelling broadcasters to pay significant penalties for even minor errors in reports of use. NAB believes that it is essential that the Judges have complete information before them not only from copyright owner representatives but also from copyright licensees who would be subject to these requirements in order to illustrate the burdens imposed by the existing and proposed requirements. To gather that information and prepare a full response incorporating that information will take more time than the 30 days currently allotted.

Second, SoundExchange was able to prepare its October 21, 2013 petition seeking this rulemaking wholly on its own timetable. While it knew well before last October that it was filing a petition, to NAB's knowledge, the petition was not published in the Federal Register or elsewhere to put licensees on notice of its contents. Even licensees who later found out about the petition and were able to obtain a copy of it would not have known whether or how the Judges would act on it until the NPRM issued on May 2, 2014. Thus, SoundExchange has had the significant advantage of time to consider how to support its list of requested changes. Fundamental fairness and due process concerns thus strongly support expanding the comment period to level the playing field at least somewhat.

Third, NAB is unaware of any urgency that would necessitate immediate action on SoundExchange's proposal and deprive licensees of an additional three weeks in which to respond. The current recordkeeping requirements have been in place for years, so there do not appear to be any time-sensitivities militating against expanding the comment period for a modest three additional weeks.

Fourth, there is precedent for granting the requested extension. In conjunction with the same statutory licenses under 17 U.S.C. § § 112 and 114 for which recordkeeping requirements are under consideration here, the Copyright Office extended the time to comment in a prior

notice of proposed rulemaking to provide a comment period of nearly 60 days – *i.e.*, from February 7, 2002 to April 5, 2002. *See* Notice and Recordkeeping for Use of Sound Recordings Under Statutory License: Extension of Comment Period, 67 Fed. Reg. 10,652 (Mar. 8, 2002). The Copyright Office similarly granted a one-week extension in its ongoing music licensing study even though the comment period was already open for two months “[t]o ensure commenters have sufficient time to address the topics set forth in the March 2014 Notice of Inquiry.” *See* Music Licensing Study: Notice of Extension of Comment Period, 79 Fed. Reg. 27,938 (May 15, 2014). Consistent with this precedent, the Judges would not need to republish the proposed regulations but simply could issue a brief notice that the comment period has been extended to enable sufficient time for comments.

For the foregoing reasons, NAB respectfully requests that the Judges grant a 21-day extension of time – until June 23, 2014 – in which interested persons may file comments to the Judges’ proposed regulations governing notice and recordkeeping requirements. In addition, for the same reasons discussed above, NAB further requests that the reply comment period be extended to permit 21 days in which interested persons may reply to comments submitted by others.

Respectfully submitted,



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